

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1418

STATE OF WEST VIRGINIA,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

PETITION FOR REVIEW OF A FINAL AGENCY ACTION OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNOPPOSED MOTION TO HOLD CASE IN ABEYANCE

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Respondents United States Environmental Protection Agency and Administrator Lee Zeldin (EPA) respectfully move the Court to hold this case in abeyance (with status reports every 120 days) while EPA continues to reconsider elements of the underlying rule challenged here. Undersigned counsel has conferred with counsel for Petitioner West Virginia. West Virginia does not oppose this motion.

1. West Virginia seeks review of an EPA action disapproving its State Implementation Plan. *See* 88 Fed. Reg. 9336 (Feb. 13, 2023) (Disapproval). EPA is in the process of reconsidering the Disapproval.¹ It is possible that EPA could take further action that may obviate the need for judicial resolution of some or all of the disputed issues in this case.

2. This Court previously granted a 60-day abeyance. Dkt. 137 (ordering EPA to file a motion to govern by September 8, 2025). A further abeyance of this case is warranted to preserve the parties' and the Court's resources while EPA's reconsideration is in progress. *See, e.g., Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Bledsoe v. Crowley*, 849 F.2d 639, 645 (D.C. Cir. 1988).

¹ *See* EPA Press Release (Mar. 12, 2025), <https://www.epa.gov/newsreleases/trump-epa-announces-plan-work-states-sips-improve-air-quality-and-reconsider-good>.

3. Courts have long recognized that agencies may generally review and, if appropriate, revise their past decisions. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (recognizing that “regulatory agencies do not establish rules of conduct to last forever” and “an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances”) (citation omitted). Courts routinely grant abeyance in circumstances like those presented here where a new administration seeks to review prior actions. *See, e.g., Wild Va. v. Council on Env’tl. Quality*, 56 F.4th 281, 293 (4th Cir. 2022) (observing that holding case in abeyance pending future rulemaking could “moot additional aspects of this case”).

4. To apprise the parties and the Court of EPA’s progress, EPA proposes filing status reports at 120-day intervals during the abeyance period. EPA also proposes to file a motion to govern within 30 days after publication of a final rule in the Federal Register or 30 days after EPA otherwise determines that its reconsideration process has concluded.

Respectfully submitted,

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Counsel for Respondents

DATE: September 8, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion complies with Fed. R. App. P. 28(b) and 32(a)(7)(B), (f), and (g), as it complies with typeface requirements and contains 379 words, excluding exempted portions.

Date: September 8, 2025

/s/ Alex J. Hardee
ALEX J. HARDEE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification to the attorneys of record.

Date: September 8, 2025

/s/ Alex J. Hardee
ALEX J. HARDEE